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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,026	05/05/2004	Kenneth Rambo	020366-091910US	7767
84190	7590	07/20/2009	EXAMINER	
Qwest Communications International Inc. 1801 California St., #900 Denver, CO 80202			HICKS, CHARLES N	
			ART UNIT	PAPER NUMBER
			2424	
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			07/20/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/840,026	Applicant(s) RAMBO, KENNETH	
	Examiner CHARLES N. HICKS	Art Unit 2424	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19,25-27 and 30-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19,25-27 and 30-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/16/2009, 6/5/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/1/2009 has been entered.

Response to Arguments

2. Applicant's arguments filed 3/16/2009 have been fully considered but they are not persuasive. In regards to applicant's argument that Houghton fails to disclose a survey database, a survey server, or surveying data to create reports is understood, but the examiner disagrees. It is clearly stated in Houghton on page 8, paragraph 87, that the host server polls, and thereby creates reports from the profile servers of the customers it serves. This request for information is gathered from the numerous profile servers in the network of the host, as in paragraph 81. In regards to applicant's argument that Houghton teaches away from the invention the examiner understands, but disagrees. Although the crux of the invention is to allow for real time interactive polling of user favoritism of viewed subject matter, this information can also be

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extrapolated from the stored information in the profile servers as requested by the host server, based on the historical information stored therein.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 19, 25-27, and 30-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKissick (US 2007/0124795 A1), hereinafter referred to as McKissick, in view of Houghton (US 2002/0124247 A1), hereinafter referred to as Houghton.

6. Regarding claim 30, McKissick discloses a communications network having a plurality of interconnected instant messaging (IM) users, comprising: a user interface

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associated with each user, including a display device and plural display windows at the display device, the plural windows for simultaneously displaying multiple content, wherein a first display window is for displaying a broadcast television program for that user, wherein a second display window is for displaying IM content including IM messages created by the IM users, and wherein at least some of the IM content includes a program ID identifying the television program being displayed to users creating the IM messages (**fig. 4, pg. 6, paragraphs 80-81, pg. 12, paragraph 130 wherein the program is identified by the title**);

and an IM server operated by an IM service provider for receiving, displaying and sending IM messages among the users, the IM server also managing personal profile data entered by the users (**fig. 2, pg 5-6, paragraph 75**).

However McKissick is silent regarding a survey database connected to the IM server for receiving and storing data relating to the displayed IM messages and a separate survey server. Houghton discloses a survey database connected to the IM server for receiving and storing data relating to the displayed IM messages (**fig. 6, pg. 8, paragraph 80-81**);

and a survey server separate from the IM server for receiving from the survey database data relating to IM messages displayed at the user interface, for aggregating IM content, including program IDs and keywords present in the displayed IM messages, and personal profile data of the users associated with the displayed IM messages, and for generating reports so that video programming activity by multiple users may be tracked at the survey server (**fig. 6, pg. 8, paragraph 80-81**). Motivation

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to combine the references is due to the fact that the references deal with distributing instant messaging in a network and storing user profiles. Therefore the invention would have been obvious to one of ordinary skill in the art at the time of the invention.

7. Regarding claim 19, McKissick discloses the display system wherein the instant messaging content further comprises: a personal ID associated with a user of the IM application **(fig. 5-6, pg. 7, paragraphs 87-89)**.

8. Regarding claim 26, McKissick discloses the display system wherein the television program is provided to the display system by a satellite television service **(fig. 1, pg. 3, paragraph 52)**.

9. Regarding claim 27, McKissick discloses the display system wherein the television program is provided to the display system by a cable television service **(fig. 1, pg. 3, paragraph 52)**.

9. Regarding claim 31, McKissick discloses the communications network wherein the user interface further comprises a set top box for providing video signals to the display device **(fig. 1A-B, pg. 5, paragraphs 69-70)**.

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10. Regarding claim 32, McKissick discloses the communications network wherein the display device comprises a television (**fig. 1A-B, pg. 5, paragraphs 69-70**).

11. Regarding claim 33, McKissick discloses the communications network wherein the IM content further comprises a text message (**fig. 4, pg. 7, paragraph 84**).

12. Regarding claim 34, McKissick discloses the communications network wherein the users are each using an IM application, and wherein the network further comprises: a set top box for each of the users and for executing the IM application, wherein the set top box receives the broadcast television program and the program ID identifying the television program, wherein the IM application captures the program ID at the set top box so that the program ID identifying the broadcast television program being viewed by each user changes when the television program being viewed by that user changes (**fig. 4, pg. 12, paragraphs 130-131**).

13. Regarding claim 35, McKissick discloses the communications network wherein the display device further includes a set up screen used by each of the users to set up an instant messaging session, and wherein the program ID is entered by the user at the set up screen (**fig. 1A-D, pg. 4-5, paragraphs 66-67**).

14. Regarding claim 36, McKissick discloses the communications network wherein the personal profile data of the users is entered at a profile screen, so that the

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programming activity being tracked can be associated with demographic information of users collected from the personal profile data (**fig. 6A, pg. 7, paragraph 88**).

17. Regarding claim 25, McKissick fails to disclose the display system wherein the television program is provided to the display system by a VDSL service. However Official Notice is taken due to the fact that a display system wherein the television program is provided to the display system by a VDSL service is extremely well known in the art of interactive video distribution systems and provides excellent bandwidth.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Alao (US Patent No. 7,484,236 B2) discloses a service gateway for interactive television.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHARLES N. HICKS whose telephone number is (571)270-3010. The examiner can normally be reached on M-F 7:30AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chris Kelley/
Supervisory Patent Examiner, Art
Unit 2424

CNH